



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2016

Mr. Jeffrey W. Giles
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2016-09454

Dear Mr. Giles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 607310 (GC No. 23042).

The City of Houston (the "city") received a request for six categories of information pertaining to transportation network companies, including information related to Rasier, L.L.C., d/b/a Uber ("Rasier"). You state the city will release some of the requested information. You further state the city does not maintain information responsive to a portion of the request.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Rasier. Accordingly, you state, and provide documentation showing, you notified Rasier of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

comments from Rasier. We have reviewed the submitted representative sample of information and the submitted arguments.²

Initially, you state some of the submitted information may be the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-02916A (2015). In response to Open Records Letter No. 2015-02916A, Rasier has filed a lawsuit against our office. *See Rasier LLC v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-001098 (53rd Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in the lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public.³

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Rasier states it has competitors and asserts release of the remaining information would give its competitors a decisive advantage. After review of the information at issue and consideration of the arguments, we find Rasier has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the remaining information under section 552.104(a) of the Government Code.⁴

In summary, to the extent the requested information is the subject of a pending lawsuit, we will allow the trial court to resolve the issue of whether that information must be released to the public. The city may withhold the remaining information under section 552.104(a) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

³As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address Rasier’s remaining arguments against disclosure of this information.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 607310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)